

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,	:	
Petitioner,	:	
- v -	:	18 Misc. _____
ANTHEM, INC.,	:	
Respondent.	:	

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PETITION OF THE UNITED STATES FOR SUMMARY ENFORCEMENT OF CID 18-46

Pursuant to the False Claims Act, 31 U.S.C. § 3733(j) (the “FCA”), petitioner the United States (the “Government”) respectfully petitions this Court for an Order directing respondent Anthem, Inc. (“Anthem”) to comply with Civil Investigative Demand 18-46 (“CID 18-46”), which was issued to Anthem by the Government on March 22, 2018.¹ As set forth below, Anthem has not petitioned to modify or set aside CID 18-46; nonetheless, it has refused to provide testimony sought by CID 18-46. In support of this Petition to enforce CID 18-46, the Government states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding under 31 U.S.C. § 3733(j) and 28 U.S.C. § 1331.
2. Venue is proper under 31 U.S.C. § 3733(j).

PARTIES

3. Petitioner is the United States. Through the Centers for Medicare and Medicaid Services (“CMS”), the United States provides funding for the Medicare Advantage program, which is commonly referred to as Medicare Part C.

¹ A copy of CID 18-46 is attached as Exhibit 1 to the Declaration of Li Yu, dated August 20, 2018, in support of this Petition.

4. Respondent is Anthem, an Indiana corporation with its principal place of business at 120 Monument Circle in Indianapolis, Indiana. In its role as a sponsor of Medicare Part C plans, Anthem has transacted business in the Southern District of New York by marketing two or more of its Part C plans to Medicare beneficiaries in New York.

ISSUANCE AND SERVICE OF CID 18-46

5. On March 22, 2018, CID 18-46 was issued by Geoffrey S. Berman, the United States Attorney for the Southern District of New York and a designee of the Attorney General under 31 U.S.C. § 3733, to Anthem pursuant to the FCA.

6. On March 22, 2018, CID 18-46 was served on ESI by the Government by sending a copy of that CID to Anthem's counsel at O'Melveny & Myers LLP.

7. CID 18-46 seeks from Anthem deposition testimony concerning five topics, including, as relevant to this petition, Topics 3(iii), 4, and 5.

8. As stated in CID 18-46, the Government is seeking such testimony from Anthem to investigate whether Anthem violated the FCA in connection with its "submission of risk adjustment claims to [] CMS under Parts C and D of the Medicare Program." The Government has reason to believe that the testimony responsive to Topics 3(iii), 4, and 5 in CID 18-46 is relevant to the subject matter of this investigation.

9. More specifically, and as relevant to this petition, Topics 3(iii), 4, and 5 in CID 18-46 seek information concerning the policies, procedures, training, and personnel that Anthem has relied upon to assess and ensure the validity of diagnosis codes from two sources – provider-submitted claims data and retrospective chart review results – that Anthem then reported to CMS as part of the Medicare Part C risk-adjustment payment process.

10. The testimony sought by Topics 3(iii), 4, and 5 in CID 18-46 is reasonably relevant to the Government's investigation under the FCA; and these topics in CID 18-46 are not indefinite nor unduly burdensome.

ANTHEM'S FAILURE TO COMPLY WITH CID 18-46

12. On its face, CID 18-46 demanded testimony by April 13, 2018.

13. Anthem has not petitioned to modify or set aside CID 18-46 with respect to Topics 3(iii), 4, and 5. Yet, despite requests by the Government for testimony for these topics in relation to the validity of provider-submitted diagnosis codes, Anthem has refused to provide such testimony pursuant to CID 18-46.

14. On August 1 and August 10, 2018, and in an effort to avoid litigation, the Government voluntarily narrowed the scope of Topics 3(iii), 4 and 5 in CID 18-46 in two regards. But Anthem, continued to refuse to provide the testimony sought by CID 18-46.

15. Summary enforcement of CID 18-46, accordingly, is appropriate.

WHEREFORE, petitioner the United States respectfully requests as follows:

1. that this Court enter the Order to Show Cause directing Anthem to show cause as to why it should not be compelled to comply with CID 18-46; and

2. that this Court enter an Order directing Anthem to produce a corporate representative by October 2, 2018, to testify about Topics 3(iii), 4, and 5 in CID 18-46 and subject to the two limitations that the Government voluntarily accepted on August 1, 2018.

Dated: New York, New York
August 20, 2018

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